

January 26, 2023

Via ECF

Hon. Paul G. Gardephe
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *In re Bed Bath & Beyond Inc. Section 16(b) Litigation*, No. 22 Civ. 9327 (S.D.N.Y.)

Dear Judge Gardephe,

The parties respectfully submit this joint letter in advance of the initial pretrial conference scheduled for February 2, 2023 at 11:15 A.M., pursuant to the Court's December 7, 2022, Order and Individual Rule VII(B). *See* ECF No. 6 at 1; *Cohen v. Cohen, et al.*, 22 Civ. 9733 (S.D.N.Y. 2022) Dkt. ("Cohen Dkt.") No. 17 at 1.

1. Brief Description of the Case.

This is a consolidated action alleging that defendants RC Ventures LLC and Ryan Cohen (collectively referred to herein as "Defendants") received short-swing trading profits that they are required to disgorge pursuant to Section 16(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78p(b), for the benefit of Bed Bath & Beyond Inc (the "Company"). The Court has previously provided a brief description of Plaintiffs' allegations in this case in its December 12, 2022 Order (ECF No. 20), a copy of which is attached hereto as Exhibit A. For the sake of brevity, the parties rely on that description. The grounds for Defendants' contemplated motion to dismiss are set forth in their pre-motion letters, filed with the Court on November 23, 2022 and December 1, 2022. ECF No. 12; *Cohen* Dkt. No. 16.

2. Pending and Contemplated Motions.

Lead Plaintiff and Counsel. Counsel for both Plaintiffs filed motions seeking to be appointed lead counsel (or co-lead counsel) in the consolidated action and opposing the other's appointment. *See* ECF Nos. 21-24. Defendants and BBBY have expressed no position on the matter.

Dispositive Motions. Prior to consolidation, Defendants filed pre-motion letters in each action requesting leave to move to dismiss both complaints. ECF No. 12; *Cohen* Dkt. No. 16. BBBY joined in the Cohen Defendants' requests. ECF No. 19 at 1; *Cohen* Dkt. 22 at 1. Plaintiff Augenbaum requested leave to either move or cross-move for partial summary judgment and lift the Private Securities Litigation Reform Act's ("PSLRA") automatic stay of discovery while any

motion to dismiss is pending.¹ ECF No. 13 at 1; *see* 15 U.S.C. § 77z-1(b). Plaintiff Cohen requested that the Court deny the Defendants leave to move to dismiss, and, instead, allow him to move for summary judgement. *Cohen* Dkt. 12 at 2.²

3. Prospect for Settlement.

The parties have not engaged in settlement discussions, and it is the parties' position that further settlement discussions prior to a decision on Defendants' anticipated motion to dismiss or plaintiffs' anticipated motions for summary judgment will not be fruitful.

Respectfully Submitted,

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¹ Because the parties do not dispute that the PSLRA's automatic stay of discovery applies in this case (absent an order lifting the stay per Plaintiff Augenbaum's request), Defendants' position is that it is premature to submit a proposed case management plan ("CMP") at this time. Plaintiffs' position is that because the Court ordered the parties to submit a case management plan, a CMP should be submitted notwithstanding the PSLRA discovery stay. Plaintiffs' proposed CMP is attached as Exhibit B, with dates that are largely tied to the Court's ruling on the anticipated motion(s) to dismiss.

² The Court has instructed that the pre-motion letters regarding motions to dismiss and motions for summary judgment will be addressed after the topic of lead plaintiff has been resolved. ECF No. 20 at 8.

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